IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 903 OF 2000

Ulhas Babu Dattaram Rao ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Mrs. Latika Khemani advocate appointed for the appellant.
Mrs. U.V.Kejariwal APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 20TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No.368 of 1986 under sections 302 & 394, of IPC on 27-7-2000 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story as disclosed on re-appreciation of evidence stated briefly is that the victim was staying with the brother of the accused and the accused was known to the family of the victim. On 20-2-1986 around 4.30 p.m. neighbours knocked the doors of Mrs. S.M. Karnik and getting no response, obtained keys from the neighbourhood and opened the lock. Then they found the lady i.e. Mrs. Karnik lying in a haphazard condition and in a unconscious stage. The doctor was therefore called, who declared that the lady was dead and therefore police were informed, investigation followed and the accused was charged with different sections as mentioned above. The prosecution has examined as many as 14 witnesses to prove its case and it was on appreciation of these evidence the learned trial Judge convicted the accused as aforesaid.

4. The learned counsel appearing on behalf of the accused/appellant submitted that there is no eye witness, there is no cogent circumstantial evidence to connect the accused with the crime and therefore the order of conviction is unsustainable in law. According to the learned counsel the evidence of recovery of ornaments belonging to the victim from the

accused/appellant cannot be read that he was the person who killed the victim. On the other hand, the learned prosecutor submitted by pointing out that the chain in the circumstantial evidence are complete and there is no missing link and therefore there is no reason why the order of conviction should be interfered with.

5. As aforesaid, we have re-appreciated the evidence on record. P.w.1 Dr. Prakash is the family doctor of victim Mrs. Karnik, who was called immediately after discovering Mrs. Karnink lying unconscious. He examined her and found that she is dead. He therefore called police and it was on his call that the investigation started.

6. P.w.2 Krishna Utekar is a panch witness to the seizure of clothes of the victim. The clothes were bloody and the seizure is proved to be correct. P.w.3 Asha Bangwedkar and P.w.4 Anil Bagwedkar are the witnesses who are neighbours of the victim for several years and therefore they were well acquainted with the victim. They have identified the articles seized as the ornaments belonging to the victim. P.w.5 Manish is the person who obtained the key of the flat from the neighbour, when he found there is no response from Mrs. Karnik from inside the house. P.w.6 Kantilal is a money lender, who has proved that two year tops (Pudya)

were hypothecated to him by the accused. He has identified the accused as the person who has hypothecated the ornaments. He has given the time when it was done. In the cross examination he however admits that he may not be in a position to identify this if it is mixed with several other ornaments of the same nature. However he has identified the ornaments in this case. Nothing much turns on the evidence of this person, as there has been recovery of other ornaments undisputably belonging to the victim at the instance of the accused from the place shown to them.

7. P.w.7 is Dr. Prabhakar who performed post martum on the body of the victim and proved that the death was homicidal. The evidence of P.w.8 is inconsequential. P.w.9 Raju is the witness to the statement made by the accused regarding hypothecating of the ear tops by the accused. He has proved the same. He proved that he has identified the same before the police. He has stated in the cross examination that the accused told in his presence that he had kept the ornaments on pawn and the accused himself has pointed out where the pawn ear tops were kept and thereafter the ornaments were taken out by the shop keeper P.w.6. It will thus be seen that the accused had pawn the ear tops. He has identified the same. They are proved to be belonged to the victim.

8. P.w.10 is the panch witness of seizure of certain bloodied articles. P.w.11 is Shalini, who totally corroborates what has been said by the witness P.w.1 and she has narrated the entire happenings to the police. She has also identified the ornaments i.e. chain, bangles and ear tops etc. as belonging to the deceased. She thus proves that the articles recovered from the accused or at his instance are belonging to the victim. There is also evidence on record to show that the victim was wearing these ornaments regularly and the same were not present on the person of the victim when the victim was murdered.

9. P.w.12 Madhukar is the panch witness who proves the panchanama pertaining to the seizure of chain and ring at the instance of the accused. P.w.13 is Sandeep who worked at the relevant time in Premier Automobiles, Kurla and has deposed that the accused was also working in the same company. He stated that the accused was staying with his aunt (that is witness's aunt). On 20-2-1986 around 3.50 p.m. the witness went to the house of Mrs. Karnik and ran the bell and the door was opened by the accused. When the witness enquired about Mrs. Karnik, he noticed that the accused was scared. He left the message of Uday, brother of accused, who was working with the witness that he would be late on

that day. He has described the clothes worn by the accused at that time and he then left. Later on, these clothes were identified by him as those belonging to the accused.

10. P.w.14 is Ravindra, who was Police Inspector at the relevant time and he recorded the FIR. He has also proved the statement made by the accused, which resulted in the recovery of certain ornaments, belonging to the victim. He has proved all those items.

11. This is the evidence on the basis of which the learned Judge has convicted the accused as aforesaid. It will be seen from the evidence that the prosecution has examined and proved the entire chain of circumstances, which unmistakably pointing to the guilt of the accused. The following circumstances, in our opinion, firm the entire chain of circumstances. Each is proved and therefore in our opinion, the offence is proved.

i) The prosecution has established that the accused was staying with the victim.

ii) The accused was found disturbed at 3.50 p.m. on the date of incident when P.w.13

called him at Mrs. Karnik's house immediately thereafter she was found dead.

iii) The presence of the accused just prior to killing of Mrs. Karnik is proved by this witness P.w.13.

iv) Discovery of the body at the instance of P.w.1.

v) Disappearance of the accused at that time.

vi) Recovery of items at the instance of the accused.

vii) Incident of pawning of ear tops by the accused is proved by P.w.6.

viii) Recovery of blood stained clothes belonging to the accused.

ix) Identification of those clothes as clothes worn by the accused around 3.50 p.m. on the date of incident.

x) Recovery of certain articles at the instance of accused from the possession of

the accused.

12. All these circumstances, taken together, in our opinion, pointing out to the accused as the person who has committed murder. We therefore see no reason to interfere. Hence appeal fails and it is dismissed.

13. The amount quantified as fees payable to the learned prosecutor and the learned advocate appointed for the appellant as Rs. 1000/- for this appeal.

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